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BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

5 Attorneys for Best Western International, Inc.

6 **IN THE UNITED STATES BANKRUPTCY COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 In re

9 LEEWARD HOTELS, L.P., an Arizona
10 limited partnership,

11 Debtor.

No. B-99-09162-ECF-GBN

Chapter 11

**MOTION OF BEST WESTERN
INTERNATIONAL, INC., FOR
RELIEF FROM AUTOMATIC STAY**

12
13 The Motion of Best Western International, Inc., respectfully represents as
14 follows:

15 1. Best Western International, Inc. ("BWI") is a non-profit corporation
16 organized pursuant to the laws of the State of Arizona, and operated on a cooperative basis
17 by and for the benefit of its members.

18 2. The Debtor, Leeward Hotels, L.P., commenced this bankruptcy by the
19 filing of its petition for relief herein on or about August 2, 1999.

20 3. Debtor claims to be the successor in interest to Leavenworth Hotel, L.P.;
21 Ottawa Hotel, L.P.; Olathe Best Hotel, L.P.; Liberty Best Hotel, L.P.; and Lubbock Best
22 Hotel, L.P.

23 4. On or about the 24th day of January, 1997, Ottawa Hotel, L.P. entered into a
24 Membership Agreement with BWI to affiliate the Best Western Hallmark Inn, Ottawa,
25 Kansas with BWI; to license Ottawa Hotel, L.P. to use the "Best Western" name and
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1 identification symbols; and to authorize Ottawa Hotel, L.P., to utilize the various services,
2 including the reservations system, of BWI. A copy of said Membership Agreement is
3 attached hereto as Exhibit "A", and incorporated herein by reference.

4 5. On or about the 24th day of January, 1997, Olathe Best Hotel, L.P. entered
5 into a Membership Agreement with BWI to affiliate the Best Western Hallmark Inn South,
6 Olathe, Kansas with BWI; to license Olathe Best Hotel, L.P. to use the "Best Western"
7 name and identification symbols; and to authorize Olathe Best Hotel, L.P. to utilize the
8 various services, including the reservations system, of BWI. A copy of said Membership
9 Agreement is attached hereto as Exhibit "B", and incorporated herein by reference.

10 6. On or about the 24th day of January, 1997, Leavenworth Hotel, L.P. entered
11 into a Membership Agreement with BWI to affiliate the Best Western Hallmark Inn,
12 Leavenworth, Kansas with BWI; to license Leavenworth Hotel, L.P. to use the "Best
13 Western" name and identification symbols; and to authorize Leavenworth Hotel, L.P. to
14 utilize the various services, including the reservations system, of BWI. A copy of said
15 Membership Agreement is attached hereto as Exhibit "C", and incorporated herein by
16 reference.

17 7. On or about the 24th day of January, 1997, Leavenworth Best Hotel, L.P.
18 (believed to be a/k/a Liberty Best Hotel, L.P.) entered into a Membership Agreement with
19 BWI to affiliate the Best Western Hallmark Inn North, Liberty, Missouri with BWI; to
20 license Leavenworth Best Hotel, L.P. to use the "Best Western" name and identification
21 symbols; and to authorize Leavenworth Best Hotel, L.P. to utilize the various services,
22 including the reservations system, of BWI. A copy of said Membership Agreement is
23 attached hereto as Exhibit "D", and incorporated herein by reference.

24 8. On or about the 31st day of January, 1997, Lubbock Hotel, L.P. entered into
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1 a Membership Agreement with BWI to affiliate the Best Western Lubbock Regency Hotel,
2 Lubbock, Texas with BWI; to license Lubbock Hotel, L.P. to use the "Best Western" name
3 and identification symbols; and to authorize Lubbock Hotel, L.P. to utilize the various
4 services, including the reservations system, of BWI. A copy of said Membership
5 Agreement is attached hereto as Exhibit "E", and incorporated herein by reference.

6 9. Each of the above-identified Membership Agreements provides that the
7 Membership Agreement terminates upon sale or transfer of control of the hotel
8 properties. Debtor claims that it obtained ownership and control of each of the above-
9 identified hotel properties subsequent to the dates of the Membership Agreements. BWI
10 was not informed of any sale or transfer of control of any of the hotels prior to the
11 commencement of this bankruptcy proceeding. Best Western memberships are not
12 transferrable without the prior written approval of Best Western, which approval has
13 neither been requested nor granted.

14 10. Each of the Membership Agreements further provide that the license to use
15 the Best Western name, trademarks, service marks and identification symbols also
16 terminates upon termination of the Membership Agreements.

17 11. Notwithstanding the termination of the foregoing Membership Agreements
18 prior to the commencement of these bankruptcy proceedings, and solely because BWI
19 was unaware that ownership and control of the hotel properties had been transferred or
20 sold, BWI has continued to provide membership services to the hotel properties to the
21 present date, including reservations services. Similarly, each of the hotel properties has
22 continued to utilize the "Best Western" name, trademarks, service marks, and
23 identification symbols since the termination of the membership and license agreements,
24 without authority or approval of BWI.
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1 12. Pursuant to BWI's policies and procedures, BWI can not enter into other
2 Membership Agreements with owners of other hotel properties in the vicinity of existing
3 Best Western affiliated hotels without first allowing existing Best Western members an
4 opportunity to comment upon such application and to request an impact study with
5 respect to such application. Accordingly, BWI may not accept membership applications
6 from other properties within the vicinity of Debtor's Best Western hotel properties until
7 first allowing Debtor an opportunity to request an impact study with respect to such
8 application. In this case, because of the stated intent of Debtor to affiliate with a
9 competitor of BWI, such procedure would permit competing hotel properties to request
10 such impact study and delay the process of establishing new Best Western properties in
11 such areas.

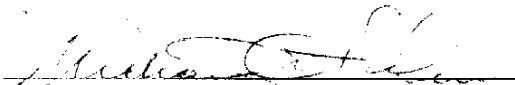
12 13. Cause exists to modify the automatic stay of 11 U.S.C. §362 herein for the
13 following reasons, and each of them:

- 14 a) each of the Membership Agreements terminated by its own terms
15 prior to the commencement of this bankruptcy case;
16
17 b) BWI is precluded from accepting any applications from third parties
18 in the vicinity of the subject hotel properties so long as Debtor's
19 properties hold themselves out as Best Western affiliated hotels and
20 continue to receive membership services from BWI, without first
21 allowing Debtor, soon to be a competitor of BWI, an opportunity to
22 demand impact studies and delay the approval process for new BWI
23 members; and
24 c) no enforceable agreement exists between Debtor and BWI to require
25 BWI to continue to provide membership services to Debtor.
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1 WHEREFORE, Best Western International, Inc., requests an order from the Court
2 modifying the automatic stay pursuant to 11 U.S.C. §362 to permit BWI to immediately
3 terminate all membership services to the above-identified hotel properties, including
4 participation in the Best Western reservations system; to terminate all license agreements
5 for such properties; and to prohibit the Debtor and all other persons acting for, or in
6 concert with, the Debtor from using the Best Western name, trademarks, service marks,
7 and identification symbols; and for such other relief as the Court deems just.

8 Dated this 24 day of December, 1999.

10 JENNINGS, STROUSS & SALMON, P.L.C.

11 By 
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17 Copy of the foregoing mailed on this
18 24th day of December, 1999, to:

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By 

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

NOTICE THAT EXHIBITS TO THIS ELECTRONICALLY FILED DOCUMENT ARE
NOT ATTACHED.

There were one or more exhibits and/or other attachments filed with this pleading that consisted of pages too numerous for the clerk to scan and electronically file as part of the pleading. Paper copies of these exhibits are maintained at the Office of the Clerk. They may be reviewed at that office 9:00 a.m. to 4:00 p.m., Monday to Friday, at 2929 North Central Avenue, Ninth Floor, Phoenix, Arizona, or you may arrange to obtain copies from the filing attorney.

KEVIN E. O'BRIEN
CLERK OF COURT